

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for Authority, Among Other Things, To Increase  
Revenue Requirements for Electric and Gas  
Service and to Increase Rates and Charges for Gas  
Service Effective on January 1, 2003.

(U 39 M)

Application 02-11-017  
(Filed November 8, 2002)

Investigation on the Commission's Own Motion  
into the Rates, Operations, Practices, Service and  
Facilities of Pacific Gas and Electric Company.

Investigation 03-01-012  
(Filed January 16, 2003)

Application of Pacific Gas and Electric Company  
Pursuant to Resolution E-3770 for  
Reimbursement of Costs Associated with Delay  
in Implementation of PG&E's New Customer  
Information System Caused by the 2002 20/20  
Customer Rebate Program.

(U 39 E)

Application 02-09-005  
(Filed September 6, 2002)

**ASSIGNED COMMISSIONER'S SCOPING MEMO  
AND RULING ESTABLISHING SCOPE, SCHEDULE, AND  
PROCEDURES FOR PHASE II OF INVESTIGATION 03-01-012**

## **Summary**

Pursuant to Article 2.5 of the of the Commission's Rules of Practice and Procedure (Rules),<sup>1</sup> and following a prehearing conference (PHC) held on March 22, 2005, this ruling sets forth the scope, schedule, and procedures for Phase II of Order Instituting Investigation (I.) 03-01-012, addressing the issues raised by The Utility Reform Network's (TURN) Motion for an Investigation into Pacific Gas and Electric Company's (PG&E) Billing and Collection Practices (Investigation) and the Assigned Commissioner's Ruling granting TURN's motion issued on February 25, 2005 (ACR). The ACR consolidated the Investigation with I.03-01-012.

## **Scope of the Proceeding**

As stated in the February 25, 2005 ACR, the purpose of this proceeding is to determine whether PG&E's past actions with regard to billing and collecting, including its collection of deposits from customers, are consistent with the orders and regulations of the Commission.

The ACR identified the following issues as within the scope of the Investigation:

- Whether PG&E has implemented any changes to its billing practices since the beginning of 2002 that would impact the number of estimated or delayed bills it issues to its customers.
- The effect of PG&E's new billing system CorDaptix on the utility's billing practices.
- Whether PG&E has implemented any change to its collection practices since the beginning of 2002.

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<sup>1</sup> Rule citations are to the Commission Rules of Practice and Procedure unless otherwise specified.

- In each year since 2002, of the customers who had their service terminated due to non-payment of their utility bill, how many had received estimated or delayed bills.
- How PG&E determines whether and when to require a deposit, including whether it has implemented any change to its deposit requirement practices since the beginning of 2002.
- In each year since 2002, the number of customers from which PG&E requested a new or additional deposit for continuation of service.
- In each year since 2002, of the customers from whom PG&E requested a new or additional deposit, how many had received estimated or delayed bills.
- Investigation of whether PG&E's actions with regard to estimated and delayed bills and the impacts these bills have on the utility's customers warrant imposition of a fine.
- Investigation of appropriate reparations to the PG&E customers who have suffered from the utility's estimated and delayed billing practices and the associated collection activities for delinquent amounts from such bills.

The ACR also stated that the investigation shall determine whether:

- PG&E violated D.86-06-035 and Tariff Rules 9 and 17.1 by billing customers for periods in excess of three months, and/or
- PG&E violated its tariff rules by providing customers with estimated bills for periods in excess of three months.

The ACR also put PG&E on notice that the investigation would determine whether, pursuant to Sections 701, 734, and 1702 of the Public Utilities Code, imposition of any or all of the following remedies for the customers that have suffered from PG&E's practices is warranted:

- PG&E should be required to refund any amounts collected in violation of Tariff Rules 9 and 17.1, plus interest, to all customers who paid such amounts, and/or,

- PG&E should be fined pursuant to Public Utilities Code Sections 2107 and 2108 for violations of the Orders and Rules of this Commission.

At the PHC, PG&E suggested that the proceeding be separated into two phases, with the first phase consisting of an evaluation of the rules PG&E should follow on a prospective basis. PG&E also suggested that the Commission consider adjustments to PG&E's revenue requirements within the scope of the Investigation to ensure that PG&E has an opportunity to recover any increased costs associated with any new policies adopted.

PG&E's concern regarding new policies is premature. As set forth in the ACR, the purpose of this Investigation is to determine whether PG&E's past conduct with regard to billing and collection issues, including its collection of deposits from customers, is consistent with the decisions, rules or orders of the Commission, as opposed to establishing new billing and collection policies. As such, potential adjustments to PG&E's revenue requirements are outside the scope of this Investigation. This is consistent with the general policy that, for a utility subject to a traditional general rate case, such as PG&E, revenue requirements are set in a general rate setting proceeding, in which the Commission considers historical data and forecasted expenditures to determine for a test period the just and reasonable amount of revenues needed by the utility to provide adequate public utility service and have the opportunity to earn a reasonable rate of return. The assumption underlying this process is that between test years, changes in revenue, expense and rate base will vary proportionately so that the utility may continue to receive a fair return. Regulatory requirements, like other expenses, are therefore expected to fluctuate between test years, and the utility is not entitled to recovery of increased costs,

nor is it expected to refund any excess revenues associated with decreases in expenses.

Nevertheless, for purposes of reviewing PG&E's compliance with existing orders and regulations of the Commission, PG&E shall include in its testimony an accounting of the amount spent on CorDaptix implementation, relative to the amount authorized in D.04-05-055. In addition, the question of whether any revenue under-collection resulting from the collection limits imposed by Tariff Rule 17.1 should be recovered from PG&E's ratepayers through the uncollectible rate is also within the scope of this Investigation.

Several parties suggested that the scope of the Investigation should also include a review of billing and collection actions related to nonresidential customers. The Commission is interested in evaluating the reasonableness of PG&E's actions with respect to billing and collecting activities in general; therefore nonresidential customer billing and collection is also within the scope of this Investigation.

In Resolution G-3372, the Commission ordered PG&E to produce a report on delayed and estimated bills dating back to the year 2000. The Commission's Consumer Protection and Safety Division (CPSD) recommends that since PG&E claims that the level of delayed and estimated bills is consistent with historical averages, the scope of the Investigation should include consideration of PG&E billing and collection activity dating back further than 2002. In light of the fact that the implementation of PG&E's CorDaptix system occurred in 2002, it is reasonable to include, for purposes of comparison, billing and collection data prior to 2002. We will broaden the specified time period of this Investigation back to January 2000 consistent with the direction provided in Resolution G-3372.

We also clarify, as requested by TURN and The City and County of San Francisco (CCSF), that the Investigation will consider whether delayed bills or “true-up” bills presented by PG&E following a period of estimated usage charged customers for energy use in higher tiers in the current billing period than customers actually used.

The record should establish a clear understanding of the chronology of events leading up to the TURN motion, causes of billing and collection problems, customer classes affected by such problems, any attempts to resolve problems, the effect of any problems on customers, and whether refunds or other remedies are warranted. This Investigation is not intended to set new billing and collection policies, but to determine if PG&E’s actions were consistent with the existing policies.

The ACR included within the scope of this Investigation the question whether PG&E should be granted authority to implement a late payment fee. However, since the question whether PG&E should be granted authority to implement a late payment fee is dependent in part on the findings issued in the first part of this proceeding, we reserve the issue of the late payment fee to a later phase of this Investigation, if appropriate.

### **Category of Proceeding and Need for Hearings**

Under Pub. Util. Code § 1701.1 *et seq.* and Article 2.5 of the Commission’s Rules of Practice and Procedure (Rules), the procedures applicable to a particular proceeding depend on how the proceeding is categorized.

Section 1701.1(c) (2) defines adjudicatory proceedings as “enforcement cases and complaints except those challenging the reasonableness of any rate or charges as specified in Section 1702.”

Rule 5(b), implementing Section 1701.1, further defines adjudicatory proceedings as: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the reasonableness of rates or charges, past, present, or future.”

Section 1701.1(c) (3) defines ratesetting proceedings as those “in which rates are established for a specific company, including but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.”

Rule 5(c) further elaborates that ratesetting proceedings are “proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically names utility (or utilities). “Ratesetting proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting, as described in Rule 6.1(c).”<sup>2</sup>

The primary issue before the Commission in this investigation is whether PG&E’s actions violated the existing decisions, orders, or regulations of the Commission. This is essentially an adjudicatory question. TURN is not challenging any particular PG&E rate or charge, but rather seeks to determine whether PG&E’s reliance on delayed and estimated bills is consistent with PG&E’s tariffs and this Commission’s orders.

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<sup>2</sup> Rule 6.1(c) provides that when “a proceeding does not clearly fit into any other the categories as defined in Rules 5(b), 5(c), and 5(d), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding..”

The Commission's Office of Ratepayer Advocates, TURN, and CCSF request that the proceeding be categorized as adjudicatory. They argue that the fact-finding questions raised in ACR Paragraph 4 will form the basis for resolution of the adjudicatory issues presented in ACR Paragraphs 5 and 6 and should be considered simultaneously. CCSF further argues that the Investigation should not be mischaracterized as an investigation into general billing and collections policy.

In a March 7, 2005 motion<sup>3</sup> and again in its PHC statement, PG&E suggested that the Commission divide the Investigation into two phases, with the fact-finding components of the Investigation addressed first in a ratesetting phase, and the adjudicatory components addressed second. PG&E states that any phase of the proceeding that includes enforcement-related evidentiary hearings will need to be classified as adjudicatory under Rule 5(b)(1). PG&E compares its phased approach to the approach taken in *Order Instituting Investigation Whether Pacific Gas and Electric Company, et al., Have Violated Relevant Statutes, etc.* (2001) Cal.P.U.C.2d (D.01-05-061), where we categorized the proceeding as ratesetting and clarified that the Commission would recategorize the proceeding as adjudicatory "if our investigation results in a decision that there is probable cause to believe Respondents...violated past decisions of the Commission or other law, and we opt to determine finally whether violations occurred and consider remedies."

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<sup>3</sup> PG&E Motion, dated March 7, 2005. PG&E's Motion was originally titled an Appeal of Categorization, but was subsequently retitled "Motion for Clarification of the Assigned Commissioner's Ruling" pursuant to the direction of the Commission's Docket Office Advisor, due to the fact that PG&E's Motion did not seek to change the categorization of the proceeding.

PG&E's comparison to the approach taken in I.01-04-002 does not apply in this proceeding because the ACR clearly determined that the primary purpose of the Investigation was to review PG&E's past actions and determine whether violations occurred. In I.01-04-002, the Commission found that the proceeding involved mixed issues of fact and policy, including an inquiry into prospective changes in our decisions or other rules governing Respondents' holding company structure. Unlike I.01-04-002, this proceeding is not now looking into developing additional rules, conditions, or changes to policies, and therefore does not present the mix of policy and fact-finding issues that was present in I.01-04-002.

The issues in this proceeding concern policy enforcement, rather than policy setting or policy implementation. The appropriate category for this type of proceeding is adjudicatory.

The Assigned Commissioner originally categorized I.03-01-012 as ratesetting in the ACR issued on February 13, 2003. The February 25, 2005 ACR consolidating the TURN motion with I.03-01-012, added a new phase to I.03-01-012 and serves as the preliminary scoping memo for this Investigation. This ruling changes the preliminary finding in the February 25, 2005 ACR from ratesetting to adjudicatory for the reasons discussed above. This ruling confirms the preliminary finding that hearings are necessary. This ruling, only as to category, maybe appealed under Rule 6.4 (Rule 6.4(a).)

### **Schedule**

Considering the filed Prehearing Conference Statements, the views expressed by the parties at the PHC, and the time constraint imposed by Pub. Util. Code § 1701.2(d), the schedule for this proceeding is as follows:

September 14, 2005	Staff and Intervenors distribute
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	prepared testimony
November 9, 2005	PG&E submits responsive testimony
December 21, 2005	Staff and Intervenors distribute rebuttal testimony
January 5, 2006	Prehearing Conference
January 9, 2006, to be continued day to day through January 20, 2006, as necessary	Evidentiary Hearings Commission Courtrooms State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Date to be set at Evidentiary Hearing	Concurrent initial briefs filed.
Approx. March 1, 2006 (date to be set at evidentiary hearing)	Concurrent reply briefs filed; case submitted
Approx. May 1, 2006	Presiding Officer's Decision
Approx. June 1, 2006	Final Decision

Prior to Thursday, January 5, 2006, parties should conduct a meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on January 9, 2006, will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants' needs.

The briefing schedule will be set at the evidentiary hearing, unless otherwise determined by the ALJ. As indicated above, the anticipated submission date is tied to the date parties file concurrent reply briefs, as are all subsequent statutory dates.

### **Presiding Officer**

Pursuant to Pub. Util. Code § 1701.2(a) and Rule 6 (c), this ruling designates ALJ Julie Halligan as the Presiding Officer in this proceeding.

### **Ex Parte Rules**

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7. Parties are reminded that ex parte communications concerning categorization<sup>4</sup> must be reported pursuant to Rule 7.1(a).

### **Potential for Settlement**

In its PHC statement, PG&E stated that this proceeding may be susceptible to the use of an alternative dispute resolution approach and suggests that the Commission schedule an initial alternative dispute resolution session shortly after the submission of the parties' reply testimony. I encourage the use of alternative dispute resolution whenever possible and encourage the parties to seriously explore whether a mutually acceptable settlement of this matter is possible, either in whole or in part, after assessing the risks and costs of litigation and the strengths and weaknesses of their own positions.

Should the parties reach a mutual determination that mediation might assist them in reaching agreement in this proceeding, the Administrative Law Judge Division will provide the parties with a trained mediator. If the parties desire the services of a mediator, they should contact the assigned Administrative Law Judge (ALJ) by email (jmh@cpuc.ca.gov ) as soon as practicable and the ALJ will convey that request to the Assistant Chief ALJ who

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<sup>4</sup> See Rule 5(g).

administers the mediation program.<sup>5</sup> At a minimum, parties should explore the possibility of a joint stipulation of facts.

### **Filing and Service of Documents**

The official service list was created at the March 22, 2005 prehearing conference, and is now on the Commission's web page. Electronic Service is now the standard in the recently modified Rule 2.3 *Service*, and the new Rule 2.3.1 *Service by Electronic Mail*. These rules are effective as of March 24, 2005. All parties to this proceeding shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. As discussed at the PHC, e-mail service of documents shall be to the entire service list, including Information Only. These rules govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq. Additionally, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

#### **IT IS RULED that:**

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The presiding officer is Administrative Law Judge Julie Halligan.
4. This ruling determines that the categorization of this proceeding is adjudicatory and hearings are required for the purpose of Article 2.5 of the Commission's Rules of Practice and Procedure (Rules).

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<sup>5</sup> Assistant Chief ALJ Philip S. Weismehl currently administers the Commission mediation program. (psw@cpuc.ca.gov.)

5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure, and ex parte communications concerning categorization shall be reported pursuant to Rule 7.1(a).

6. Parties shall serve everyone on the service list, and shall serve their documents by both email and regular mail.

7. Parties shall follow the instructions in Appendix A regarding exhibits.

8. The parties shall raise any discovery disputes pursuant to Resolution ALJ-164.

Dated May 26, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

## **APPENDIX A**

### **EXHIBITS**

#### **Service of Exhibits**

Paper and electronic copies of all prepared written testimony shall be served on everyone on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

#### **Identification of Exhibits in the Hearing Room**

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 2 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

#### **Cross-examination With Exhibits**

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

#### **Corrections to Exhibits**

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**(END OF APPENDIX A)**

## **CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Scoping Memo and Ruling Establishing Scope, Schedule, and Procedures for Phase II of Investigation 03-01-012 on all parties of record in this proceeding or their attorneys of record.

Dated May 26, 2005, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.